

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by
Cynthia McCorkindale,
Complainant

against Docket #FIC 2019-0686

Chairman, Board of Finance,
Town of Bethel; Board of
Finance, Town of Bethel;
and Town of Bethel,

Respondents June 23, 2021

The above-captioned matter was heard as a contested case on February 19, 2020 and October 2, 2020, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, on or about October 15, 2019, Joseph Centofanti of PKF O'Connor Davies ("PKF"), a private accounting firm, sent the chairman of the respondent board a letter attaching a questionnaire. It is further found that the questionnaire consisted of the following four questions:
 - a. Are you aware of any actual instances of fraud within the Town?
 - b. Do you have any reason to suspect fraud may be occurring within the Town?
 - c. Have you received any communications from employees, former employees, regulators, residents, or others

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

regarding fraud?

- d. Have you seen any changes in employees or management behavior that would lead you to be concerned that fraud may be occurring?

3. It is found that the cover letter from PKA instructed the chairman, in part, to “. . . discuss and inquire with the Board. . . members and provide any information members [provide] on the attached form.”

4. It is further found that, on the final page of the questionnaire, the chairman was required to sign and date after the following statement: “The Board of Finance confirms, to the best of our knowledge and belief that the responses made to you in this request are true and accurate.”

5. It is found that, on November 10, 2019, the chairman forwarded the questionnaire to all of the members of the board with the following instructions:

Dear BOF Colleagues,

Please do not Reply All [sic] to this email. It is not intended to solicit discussion or action. . . . Attached is the auditor’s request. . . . I plan to respond by the end of this coming week. Please let me know before then whether you would answer ‘Yes’ to any of the Questions 1 through 4. . . .

6. It is found that, other than the complainant, who is also a board member, the board members provided their responses to the questionnaire only to the chairman.

7. It is found that the board conducted a regular meeting on November 12, 2019. It is further found that at such meeting, the complainant moved to add the questionnaire to the agenda, but that such motion failed and the matter was not considered or acted upon in any way.

8. By email dated and filed November 14, 2019,² the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by:

- a. Conducting a meeting out of public view through the email exchanges described in paragraphs 5 and 6, above; and

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction over this matter.

b. Failing to add the motion described in paragraph 7, above, to the agenda of the board's November 12, 2020 meeting.

9. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies . . . shall be open to the public.

10. Section 1-200(2), G.S., provides, in relevant part, that a “[m]eeting” means . . . any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.”

11. Section 1-225(c), G.S., provides, in relevant part, as follows:

[t]he agenda of the regular meetings of every public agency. . . shall be available to the public. . . Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

12. With respect to the allegation described in paragraph 8.a, above, the respondents contend that, while the chairman forwarded the questionnaire to the members of the board, there was no illegal communication or meeting as the chairman instructed the members not to “reply all” to his email and the members followed such instruction. The respondents further contended that, because they do not have “supervision, control, jurisdiction or advisory power” over audits or investigations concerning fraud within the town, the respondents did not conduct a meeting within the meaning of §1-200(2), G.S..

13. It is found that the questionnaire described in paragraph 2, above, is a standard questionnaire that gets sent from a private accounting firm to various boards and commissions within the town.

14. It is found that the respondent board does not have “supervision, control, jurisdiction or advisory power” over audits or investigations that may take place concerning fraud within the Town of Bethel.

15. It is found that the chairman’s request that each member provide him with his or her responses to the questionnaire did not involve or result in any agency discussion of fraud or the specific questions contained within the questionnaire.

16. It is concluded that the respondents did not violate §1-225(a), G.S., as alleged in paragraph 8.a, above.

17. With regard to the allegations set forth in paragraph 8.b, above, §1-225(c), G.S., does not prescribe which items must be included on an agency’s agenda. It does require, however, an affirmative two-thirds vote of the agency members present and voting in order to consider and

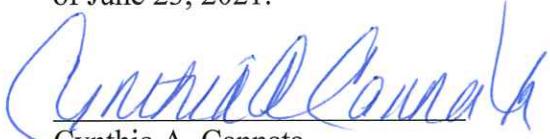
act upon any subsequent business not set forth on a particular agenda. As set forth in paragraph 7, above, the complainant's motion failed by a vote of the members of the board.

18. It is concluded that the respondents' vote described in paragraph 7, above, did not violate §1-225(c), G.S., as alleged in paragraph 8.b, above.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 23, 2021.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

CYNTHIA MCCORKINDALE, 19 Elgin Avenue, Bethel, CT 06801

CHAIRMAN, BOARD OF FINANCE, TOWN OF BETHEL; BOARD OF FINANCE, TOWN OF BETHEL; AND TOWN OF BETHEL, c/o Attorney Martin J. Lawlor, 99 Greenwood Avenue, Bethel, CT 06801



Cynthia A. Cannata
Acting Clerk of the Commission